IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WP(C).No. 33289 of 2006(K)

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OS.163/2004 of MUNSIFF COURT, KOYILANDY

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PETITIONER:

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NADUVILAKKANDY SREEDHARAN NAIR,
KANUJIKAVU DESOM, BALUSSERY AMSOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.K.P.SUDHEER

RESPONDENTS:

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1. NADUVILAKKANDY CHIRUTHEYI AMMA,
KANUJIKAVU DESOM, BALUSSERY AMSOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT.

2. NADUVILAKKANDY MADHAVAN NAIR,
S/O.NADUVILAKKANDY CHIRUTHEYI AMMA,
DO. DO.

3. NADUVILAKKANDY GANGADHARN NAIR,
S/O.NADUVILAKKANDY CHIRUTHEYI AMMA,
DO. DO.

4. NADUVILAKKANDY LEELA AMMA,
D/O.NADUVILAKKANDY CHIRUTHEYI AMMA,
DO. DO.

5. CHENGOTTU BALAKRISHNAN NAIR,
S/O.KUNHIRAMAN NAIR, THURUTHIYAD DESOM,
BALUSSERY AMSOM, KOYILANDY TALUK, KOZHIKODE DIST.

6. MALERI KOLORATH KARUNAKARAN NAIR,
S/O.KRISHNAN NAIR,
DO. DO.

7. EDATHIL GOPALAN NAIR,
S/O.CHANTHU NAIR,
KANIKKAVU DESOM, DO.

8. MODAKKOTH GOVINDANKUTTY,
S/O.APPUKUTTY NAIR,
DO. DO.

9. PADINHARE KARUVANGAL RAVEENDRAN,
S/O.NARAYANAN NAIR, KANJIKAVU DESOM,
BALUSSERY AMSOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT.

10. PILATHOTTATHIL M.BALAN,
S/O.KRISHNAN NAIR, DO. DO.

11. THEKKEYIL T.GANGADHARAN,
S/O.KRISHNAN NAIR,
DO. DO.

12. NADUVILAKKANDY CHANDRAN,
S/O.KUNHIRAMAN NAIR,
DO. DO.

13. NADUVILAKKANDY PRADEEPAN,
S/O.KUNHIRAMAN NAIR,
DO. DO.

14. NEELANKANDI SATHYANATHAN,
S/O.UNNICHATHAN NAIR,
DO. DO.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**M.SASIDHARAN NAMBIAR,J.**

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W.P.(C) .NO. 33289 OF 2006

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Dated 14th December 2006

**JUDGMENT**

Petitioner is first plaintiff in O.S.163/2004 on the file of Munsiff court, Koyilandy. This petition is filed under Article 227 of Constitution of India challenging Ext.P8 order passed by learned Munsiff dismissing the application to appoint a commissioner and submit report with the help of Taluk Surveyor. Arguments of learned counsel appearing for petitioner was that the finding in Ext.P8 is not correct and commissioner in the earlier report did not identify the property and in such circumstances Ext.P8 order is to be set aside and commission is to be appointed.

2. Question is whether in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India, any interference is called for in Ext.P8 order. This aspect was considered by a learned Single Judge of this court in **C.K.Venkateram Nayidu v.**

**C.R.Vasanthi and others (AIR 2000 Kerala 27)** and another learned Single Judge in **A.Narayani v. Kittan @ Krishnan (1996 (2) KLJ 489).** It was held that trial court has to decide the matter and in exercise of extra ordinary jurisdiction under Article 227 of Constitution of India the order cannot be interfered. Ext.P8 order is an interlocutory order in nature and as like any other interlocutory order learned Munsiff has to decide the suit untrammeled by the observation in the order. On the evidence learned Munsiff is competent to take another view at a subsequent stage, at the time of recording the evidence. If on the evidence learned Munsiff finds that property is to be identified as sought for, Ext.P8 order will not prevent the learned Munsiff from exercising his discretion. Petitioner is also entitled to cross examine the commissioner.

Writ petition is disposed of accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.